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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-861

FLORENCE LEFF and
LINCOLN ELECTRIC PRODUCTS CO., INC.,
Petitioners,

vs.

THE HOUSING AUTHORITY OF THE CITY OF EAST ORANGE and METRO MOTORS, INC.,
Respondents.

On Petition for Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

REPLY BRIEF AND SUPPLEMENTAL APPENDIX IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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The following statement appears in counsel's "Brief In Opposition" at page 5:

> "* * * * Upon contacting the Executive Director, interested bidders were given a package of materials known as the Proposal Documents which included Instructions to Redevelopers, and a Dis-

posal Map (Appendix B, page 3a) which shows the exact location of Parcel H-9 including the fact that there were to be no intervening not to be acquired lots between Parcels H-9 and H-10."

Regretably, this is precisely the type of half-truth and misleading information which form the chief bases for petitioners' complaints.

Not reproduced by Respondent is the "Land Acquisition Map, URP-3" which *also* formed a part of the Urban Renewal and Redevelopment Plan (see Supplemental Appendix A hereto). Respondent itself described *this* URP-3 map, (*not* URP-2 reproduced by it), as the source of data as to which properties were to be acquired. (See: Supplemental Appendix B hereto which reproduces pages 1 and 19A of Respondent's Plan). URP-3 does, *indeed*, depict an intervening lot 7 "not to be acquired" between Parcels H-9 and H-10.

Respondent's state of confused facts is quite consistent, since approval by HUD for acquisition of this intervening lot was not obtained by Respondent until long *after* its advertisement for bids in April of 1969. (See letter from HUD, reproduced here as supplemental Appendix C. This letter was not even received by Respondent until June 2, 1969, only four days before bids for the subject parcels were closed).

Respondent, in its brief at page 4, places great emphasis upon the fact that in 1966, three years before publishing the cryptic advertisement, there was notice of a public meeting at which the Redevelopment Plan was "received and approved". But Respondent has previously conceded in an affidavit of one of its officials that the determination to acquire lot 7 was not made until *after* ap-

proval of the Urban Renewal Plan. (See paragraph 2 of Supplemental Appendix D hereto).

At page 5 of its brief, Respondent indicates that had the Housing Authority been aware of any such interest by Petitioners [of the proposed sale of Parcel H-9] it would have sent him [sic] a personal notice just as it did the many other would be potential developers. In whose possession was the knowledge that the parcel was being assembled for sale? Propaganda distributed to petitioners, among others, three years prior to the "blind" advertisement for solicitation of bids, spoke of giving "top priority" to present occupants of the area for relocation within the Urban Renewal area. (See Supplemental Appendix E hereto). Such "opportunity" never came.

Further, the Urban Renewal Plan itself ostensibly contained provisions for owners and occupants to rehabilitate or renew their properties upon conditions to be fixed by the Housing Authority. (See Supplemental Appendix F hereto). Such advice from the Housing Authority was never forthcoming.

The procedural ineptitudes which seemed to have been the rule in this case rather than the exception *ipso facto must* have affected intelligent bidders for these properties; despite the gratuitous remark found at page 5 of Respondent's brief, nowhere to be found in the record, that

> "[t]he Executive Director or a member of his staff was always available to provide additional information or clear up any ambiguities."

How could either "the Executive Director or a member of his staff" have cleared up the ambiguity of the intervening lot for interested bidders, when HUD never ap-

proved its acquisition until June 2, 1969, four days before bids closed?

If the position taken by the East Orange Housing Authority is correct, then every procedural step they took was utterly useless and an exercise in futility—for if *no* error or defect in their procedural methodology is grounds to undo what they have done, then why waste the taxpayers' monies to promulgate and distribute HUD manuals mandating that these procedures be followed; and if *no* errors or defects in the advertising procedure are grounds for setting aside an award—no matter how obvious the potential for stifling competition may be—then why waste the public's funds in advertising at all?

Reliance by counsel for the Housing Authority on the case of *Levin v. The Township Committee of the Township of Bridgewater*, 57 N. J. 506 (1971), is ironic, since that case is indicative of the very type of sequential procedure which was non-injurious to the entire class of potential redevelopers and the public in general. The course of the public officials in Bridgewater Township was to first declare the area blighted and then to commence condemnation proceedings to acquire the property. It is true that the case upholds the proposition that an area may be redeveloped "by a private developer, selected by the Township Committee". (57 N. J. at 542), but just as clearly the majority opinion states:

> "* * * But no official action has been taken which excludes Plaintiff Levin from consideration as a candidate for selection as the overall developer of the Triangle after the blight declaration. In fact, it seems plain from the statements of municipal officials that his application, if made, will receive good-faith evaluation and fair treatment."

In the instant case, however, the Defendants' complaint is *just* that: By the arbitrary, capricious and haphazard method by which and manner in which the Housing Authority selected the redeveloper for parcels H-9, H-10 and H-11 it effectively excluded not only the Defendant but many other potential redevelopers from consideration. All that the Defendants have sought is an opportunity to apply to be a redeveloper and thereafter, "good-faith evaluation and fair treatment", (57 N. J. at 543).

Justice Haneman, in his dissenting opinion in the *Levin* v. *Bridgewater* case (57 N. J. 545 *et seq.*) states that one of the questions projected by the Plaintiffs was:

> Was the municipality's blight declaration a subterfuge to accomplish results not contemplated and authorized by the Blighted Areas Act? The *Leff* case is similar, in that questions are raised as to
>
> (1) why the parcels were offered for sale a year in advance of institution of the condemnation proceedings,
>
> (2) with a cryptic, undecipherable description
>
> (3) and awarded to a private redeveloper at a bargain price, who
>
> (4) proceeded to construct an automobile showroom on only one of the three parcels, leaving the other two undeveloped, yet still owned by it.

To the extent that these happenings smack of procedures and events inconsistent with the greatest good to the public, the *Leff* case is similar to the *Levin* case.

The question has not yet been resolved as to whether any substantive opportunity was given to the defendants or to the members of the public in general to *effec-*

Irvig, bid for redevelopment of the parcels involved. Practically, we are now limited in our discussion to parcels H-9 and H-10, since H-11 now contains the automobile showroom constructed by the third party defendant, Metro Motors, Inc. And how strange it is that Irving Leff stands ready, willing and able to pay more for the remaining 2 parcels H-9 and H-10 than the third party defendant, Metro Motors, paid for all three parcels! How stranger, still, that the East Orange Housing Authority offered the Defendant Florence Leff $55,000 for her lot alone.

As Justice Hanemian indicated in his dissenting opinion in the *Levin* case (page 550):

> "* * * The statute may not be employed to control the type or manner of land use . . . nor may be it employed as a vehicle to select the individual who will ultimately develop the land. Thus, the statute may not be used with the purpose of *controlling* the use of land or *selecting* the developer thereof for any purpose other than to make land available for a use authorized and permitted under other statutes."

> "* * * The harsh and extraordinary power of eminent domain is sought to be employed here, not for a *public use* for a public purpose, but rather for a *private use* for a public purpose. Attendant to such private use is the right of the private developer to obtain a future income and profits from the land so seized. Government is here taking land from one owner by force and giving it to another, on terms that may not benefit the former but will of necessity benefit the latter. The municipality is in effect acting as land broker on behalf of and

> representing a privileged private purchaser. In this aspect of the municipal relationship lies the inherent danger of an abusive discretion. Where, as here, property is forcably taken from one party for the purpose of being transferred to another, thereby excluding the consent of the owner and excluding all other prospective ultimate purchasers and developers except the ones selected by the municipality, the facts which allegedly give rise to that municipal power should be closely scrutinized. * * *"
>
> "* * * Recent disclosure of the conduct of some public officials emphasizes the conclusion that in a world where politics is seldom absent from municipal administration there is a real, and ever present risk that without a severe restriction of the power of municipal acquisition of property by condemnation, an individual without political connections runs the risk of having his property taken from him by force for the benefit of a better connected or more highly regarded individual. A prospective competitive purchaser can similarly be eliminated by the power of the municipality to later convey by a private transaction. That the owner may receive what at the time of taking may be considered reasonable compensation is, of itself, no excuse for a forceable taking."

We are here confronted with precisely the type of treatment which Justice Haneman decried and for which the Leffs seek this Court's mandate to permit them to bid to redevelop the parcel they occupied for 14 years. It is, indeed, farcical for the respondent to state (Pa 35-39 *et seq.*) that the purpose of the circular given to Defendants

and other members of the public in 1966 was only meant to assure "top priority" to residential owners to rehabilitate their homes and to give "top priority" to businessmen for new stores, and that, since Defendants were *industrial* property owners and occupiers they were not entitled to such priority! This is a rather novel approach to non-discriminatory treatment!

If the sincere desire of the East Orange Housing Authority was to foster genuine competition in bidding so as to promote the general welfare of the community, why do they steadfastly refuse to admit they erred and why do they not set about to rectify those errors? How simple it would be to merely readvertise the two remaining Parcels H-9 and H-10 in an intelligible, identifiable manner so as to promote genuine and informed bidding.

Who would be harmed by this procedure?

Metro Motors has already constructed its auto showroom on Parcel H-9—even in the face of this litigation.

The City of East Orange will have the benefit of full and true competitive bidding.

The taxpayers will obtain the benefit of the best possible ratables for the parcels.

Potential bidders will not be stifled by erroneous and misleading information.

The Respondent would be compelled to do no more than it should have done in the first place: follow in logical, sequential and accurate fashion, the procedural steps required by the HUD manual.

If this is done, perhaps the East Orange Housing Authority will be confronted with more than only the two bids previously received for these inherently valuable parcels.

Joseph S. Seidel, P.A.
Attorney for Petitioners.

SUPPLEMENTAL APPENDIX

Supplemental Appendix A

Land Acquisition Map, URP-3

[PHOTOSTAT]

(Opposite) ☞


PAYNE PLACE
MAIN
MAPLE TERRACE
CENTRAL AVENUE
LEGEND
LAND ACQUISITION MAP
FOURTH WARD
URBAN RENEWAL PROJECT
URP 3
EAST ORANGE HOUSING AUTHORITY
EAST ORANGE, NEW JERSEY


BAYON PLACE
NORTH WARD PLANT
HOLLYWOOD PLAZA
MAIN
SOUTH 20TH STREET
DUBOIS AVENUE
MAPLE TERRACE
WINTHROP TERRACE
NINTH AVENUE
CENTRAL AVENUE
GARFIELD PL.
GARDEN STATE PARKWAY
L E G E N
LAND ACQUISITION
FOURTH WARD
URBAN RENEWAL PROJECT

D-26

Supplemental Appendix B

Pages 1 and 19A of Respondent's Plan

Revised Date: 12-14-64

Code Number: R-213

Page Number: Pages 1-19C to replace pages 1-19

FOURTH WARD URBAN RENEWAL PROJECT
East Orange, Essex County, New Jersey

N. J. R-42

CODE R-213

URBAN RENEWAL PLAN, AND AMENDED REDEVELOPMENT PLAN FOR THE FOURTH WARD URBAN RENEWAL PROJECT

	Page
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C. LAND USE PLAN	4
D. PROJECT PROPOSALS	19A
E. OTHER PROVISIONS NECESSARY TO MEET STATE AND LOCAL REQUIREMENTS	43
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ATTACHED MAPS

Boundary Map, URP 1, dated July 30, 1964

Land Use Map, URP 2, dated July 30, 1964, Revised December 14, 1964

Supplemental Appendix B

Land Acquisition Map, URP-3, dated July 30, 1964, Revised Dec. 14, 1964.

Where the abbreviation LPA (Local Public Agency) is used in this Plan, it is interpreted to be synonymous with the Housing Authority of East Orange which is acting as the Local Public Agency.

Upon failure to meet the special requirement as established for the two disposal portions of Parcel 4 of Block 42, said property will be subject to all provisions of Section D 1b of this Plan.

In the event that the improvements on any or all of the not to be acquired properties are removed, the re-use of that property shall be in accordance with the Land Use Provisions and Building Requirements for new construction outlined under Section C2a and C2b of the Plan where the aggregate land area is ample for the enforcement of those requirements. The requirements of Section C2a and C2b shall also apply to the owner of a not to be acquired property when the owner thereof acquires project land. In the event that the requirements are not realistically applicable to the property or properties so made available, the LPA may make exception to the Land Use Provisions and Building Requirements and may endorse appropriate action for the re-use of said property or properties. Such reconstruction so endorsed shall be in full acordance with all local and applicable State codes, ordinances and building provisions and shall, in the opinion of the LPA, reflect the intent of the Urban Renewal Plan.

Supplemental Appendix B

D. PROJECT PROPOSALS

1. Land Acquisition:

a. Identification of real property proposed to be acquired is shown on the attached Land Acquisition Map, URP 3, dated July 30, 1964. The following data is depicted on the map:

(1) Clearance and Redevelopment including Spot Clearance

(2) Public Facilities

(3) Rehabilitation and Conservation Properties

b. *Statement of Special Conditions under which Properties Designated for Rehabilitation May be Acquired*

Properties designated as subject to the Property Rehabilitation Standards set forth in Section D 2 hereof are shown on the Land Acquisition Map, URP 3, dated July 30, 1964, revised Dec. 14, 1964, and consist of the following: (see attached list). If the owners of such properties are unable or unwilling to comply or conform with the regulations, controls, and restrictions applicable thereto within 1 year from the date of official notification of the property owner by the LPA of the specific deficiencies to be corrected, the LPA, upon a determination by resolution, after due consideration, that the property owner has failed to achieve substantial conformity with the Property Rehabilitation Standards, may acquire such property after thirty (30) days written notice to the owner.

Supplemental Appendix B

The LPA reserves this right to acquire any such non-complying property for a period of three (3) years from the date of approval of the Plan by the local governing body. Upon acquisition of such parcel the LPA may at its option clear such parcel for redevelopment or may dispose of such parcel without demolition of any improvements thereon but expressly subject to the pertinent and appropriate provisions, regulations, controls and restrictions of the Plan.

Code No.

R-213

Supplemental Appendix C

Letter from HUD

Exhibit A

[SEAL]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Widener Building, Philadelphia, Pennsylvania 19107

REGION II

May 29, 1969

In Reply Refer To: 2RQ

Mr. Robert M. Tague
Executive Director
Housing Authority of the
City of East Orange
City Hall
East Orange, New Jersey 07017

Dear Mr. Tague:

Subject: Project No. N. J. R-42 (Fourth Ward Area)
Block 46, Lot 7—Concurrence in acquisition price

Reference is made to your letter of May 2, 1969 which transmitted updated appraisal reports and Form HUD-6144 requesting an approved maximum acquisition price for the subject property.

A review has been made of the pertinent appraisal reports and consideration was given your recommendation on the proposed acquisition price. On the basis of this review, we are concurring in the maximum acquisition price of $40,000 for Block 46, Lot 7, as indicated on the attached Form HUD-6144. Acquisition of real estate is

to be in the fee simple estate, free and clear of all encumbrances.

Sincerely yours,

HARRY I. SHARROTT
Assistant Regional Administrator for Renewal Assistance

Enclosure

RECEIVED
JUN 2-1969
HOUSING AUTHORITY OF
THE CITY OF EAST ORANGE

Supplemental Appendix D

Affidavit of Barbara J. Weaver

SUPREME COURT OF NEW JERSEY

DOCKET NO. 8133

ON PETITION FOR CERTIFICATION TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

CIVIL ACTION

(In Condemnation)

AFFIDAVIT

EDWARD STANTON, ESQ.
134 Evergreen Place
East Orange, N. J. 07018
(201) 674-5300
Attorney for Plaintiff

HOUSING AUTHORITY OF THE CITY OF EAST ORANGE, a body corporate and politic,

Plaintiff,

vs.

FLORENCE LEFF, *et als*,

Defendants.

STATE OF NEW JERSEY;
COUNTY OF ESSEX, } ss.:

BARBARA J. WEAVER of full age, being duly sworn according to law upon her oath deposes and says:

Supplemental Appendix D

1. I am employed by the Plaintiff Housing Authority of the City of East Orange as an Urban Renewal Supervisor. As such, I am thoroughly familiar with the Urban Renewal Plan for the Fourth Ward Urban Renewal Project and I am charged with the responsibility for coordinating all land acquisition and disposition.

2. Block 46 Lot 7 was originally not scheduled for acquisition and a Land Acquisition Map URP 3 reflects this fact. Subsequent to the approval of the Urban Renewal Plan the Housing Authority determined that Lot 7 should be acquired thereby making Disposal Parcels H-9 and H-10 contiguous and more readily developable. A copy of the letter from HUD approving the acquisition of Block 46 Lot 7 is attached hereto as Exhibit A.

3. The Invitation for Proposals which was published in the newspaper identified the land to be sold by the Housing Authority as Parcels H-9, H-10 and H-11 and further described them as being located in the Fourth Ward Urban Renewal Project Area of the City of East Orange. The Invitation for Proposals stated that "No proposal will be accepted unless the prospective purchaser-developer has first acquired a copy of the proposal documents which may be obtained from the Housing Authority office . . ." In addition to publishing the Invitation for Proposals in the newspaper I personally mailed 22 copies of said Invitation to 22 prospective developers in accordance with the Housing Authority's standard practice of mailing said invitations to any person who has previously indicated an interest in acquiring property in a particular project area. No copy of said Invitation was mailed to Mr. or Mrs. Leff because neither one had expressed an interest in purchasing property in the proj-

ect area. Attached hereto as Exhibit B is a copy of my work sheets evidencing the names and addresses of the persons to whom said Invitation for Proposals was mailed.

4. As prospective developers visited the Housing Authority office for the purpose of obtaining the proposal documents they were given the package of proposal documents which is identified in Paragraph 1 of the Instructions to Redevelopers. Included in said package as 1d was the Land Disposal Map S.D. 5 which shows that Parcels H-9 and H-10 were contiguous to each other and not separated by Acquisition Parcel Block 46 Lot 7. Additional information as to the location, use, etc. of the Parcels being sold was given to the prospective developers in response to any questions which they had at that time or prior to the submission of their proposal to purchase. Attached hereto as Exhibit C is a copy of the Invitation for Proposals and the Instructions to Redevelopers.

5. Attached hereto as Exhibit D are Sections of the Urban Renewal Handbook RHA 7214.1 Chapter 4 Section 1, Pages 1 through 6 and Section 2, Pages 1 through 6.

BARBARA J. WEAVER
Barbara J. Weaver
Urban Renewal Supervisor

Sworn and subscribed to
before me this 16th day
of September 1971.

EDWARD STANTON
Edward Stanton
Attorney at Law of N. J.

Supplemental Appendix E

Clearance Questions and Answers

Housing Authority of the City of East Orange, City Hall, East Orange, New Jersey

CLEARANCE QUESTIONS AND ANSWERS

Question: What is the purpose of Urban Renewal?

Answer: To prevent the spread of blight in older neighborhoods and return them to top condition.

Question: Will all the properties in the 4th Ward Urban Renewal Area be torn down?

Answer: No, the major portion of the area has been designated for rehabilitation.

Question: How were the clearance areas arrived at?

Answer: The studies made by the Housing Authority determined what buildings in the area are run down to a point where it is not realistic to spend the money needed to fix them up. Also, the unfortunate effect of many cars and trucks caused by the Freeway makes clearance of other properties necessary.

Question: Will the home owner in the clearance area be permitted to move his home to a lot in the area?

Answer: Yes, providing the building is structurally sound. The Housing Authority will work out financial arrangements so that it will not cause undue hardship to the owner.

Question: Will there be a time element considered for relocation?

Answer: Yes, normally the Housing Authority will not require anyone to move until they have an acceptable place to relocate. It is expected that several years will be required to complete all necessary relocation.

Question: If my home is a Spot Clearance property in the Rehabilitation Area and I wish to make all necessary

improvements and repairs to meet rehabilitation standards, can my home remain?

Answer: If after discussing thoroughly with the Rehabilitation Staff, the cost of rehabilitating your property, and the structure is basically sound, the staff will work with you in order to assist you in planning a program of returning your structure to top condition.

Question: What would become of the vacant land after the Spot Clearance properties are demolished?

Answer: The land will be available for interested persons to construct new homes or made available to the adjacent owner for purchase to increase his lot size or to create needed parking facilities in the area.

Question: Will preference be given for the sale of the Spot Clearance Lots?

Answer: Yes, top priority will be given persons who have been displaced from the 4th Ward Urban Renewal Area.

Question: What provision will be made for businesses in the clearance area who wish to remain?

Answer: They will be given top priority for the new stores that will be constructed as part of the renewal plans.

Question: What are the biggest problems in relocation?

Answer: 1—The time it takes to find the right location for each person.

2—The inability of many persons to fully comprehend the program.

3—A reluctance on the part of some people to cooperate with the Housing Authority.

Supplemental Appendix F

Special Acquisition Exemption Provisions

-19B-

c. *Special Acquisition Exemption Provisions*

Properties herein scheduled for acquisition and clearance by the LPA may, under the following conditions, be exempted by and at the option of the LPA from clearance under this Plan.

(1) If that property's remaining does not encumber the disposition of previously cleared land or land to be cleared and/or the improvement of previously disposed of land and the rehabilitation of conservable properties to a degree which the LPA feels is harmful or is contrary to the goals of this Plan.

(2) If the owner signs an agreement with the LPA which in effect pledges his commitment to initiate such repairs and/or improvements which are necessary to remove the blighting influences which formed the original basis for its acquisition and to furthermore agree to raise the property to the level of the Property Rehabilitation Standards of this Plan.

Code No.
R-213